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DOI: <https://doi.org/10.1515/9783110204575.2.266>

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ZORA URL: <https://doi.org/10.5167/uzh-55281>

Book Section

Published Version

Originally published at:

Baer, Josette (2003). Appreciating minorities or why tolerance is not enough. Is power sharing the 'Moral Must' in international politics? In: Baer, Josette; Kohler, G; Marti, U. Konturen der neuen Welt(un)ordnung. Beiträge zu einer Theorie der normativen Prinzipien internationaler Politik. Berlin/New York: de Gruyter, 266-286.

DOI: <https://doi.org/10.1515/9783110204575.2.266>

Appreciating Minorities or why Tolerance is not enough: Is Power Sharing the 'Moral Must' in International Politics?

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The present paper deals with the problem of equal status of minorities. The principle of equality of ethnic minorities is fixed in the Human Rights Charter, the UN Declaration on minorities, and the OSCE Lund and The Hague declarations.¹ In the Balkans, minority communities suffered discrimination, expulsion, even genocide. Political leaders made use of nationalist claims to legitimise their attempts at redrawing borders that should include – in their perception – their historic homelands. Inter-ethnic violence was also a result of the 'rhetoric of prevention': the majorities conceived of the call for enhanced rights and more self determination, expressed by the minorities, as the first step toward secession hence the loss of state territory. Societies coping with the difficulties of economic transformation while lacking democratic experience seem particularly prone to policies of 'national unity' in terms of 'ethnic homogeneity'. From a nationalist viewpoint, the ethnic composition of the population seems, almost magically, to be the guarantee of a painless transformation.

The crucial thing in this matter has to do with the meaning of "national unity". The concept of 'national unity' works like a two-edged sword drawing on a political paradox: on the one hand, the social hardships of economic reforms target distinct groups of citizens such as the pensioners, large families, workers and peasants. The reforms, on the other hand, require a critical amount of civic trust, unanimity and discipline that must allow enough time for the effective implementation of the privatisation and liberalisation measures. In other words: the difficulties of economic transformation and democratisation require social unanimity to back measures that are of a socially dividing character for the reforms will generate losers and winners. For our purpose, two factors are important here: First, the power of the old communist elites known as the *Nomenklatura* and second, civic trust. Let me briefly present the main divide among economists analysing economic transformation.

The adherents of the so-called "shock therapy", like Aslund (1992) and Balcerowicz (1994), favour a swift liberalisation and privatisation. The adherents of a gradual transformation emphasize the role of the state as privatisation manager

1 The Lund and Hague Recommendations are published by the Foundation of Inter-Ethnic Relations. The Foundation is a NGO and was established in 1993 in order to supporting the activities of the OSCE High Commissioner on National Minorities (HCNM). Both documents suggest measures to a better integration of minorities to the public life.

(Kornai, 1990; Poznanski, 2001). The adherents of the radical reform hold that transformation in general is a leap into the dark for it was impossible to predict the outcome of the liberalisation due to the complexity of the communist economy. Radical reform consists of deregulation, liberalisation and legal settings that prevent corruption. Households and companies must be convinced of the stability of the new system. Political trust is the incentive for investment, savings and private entrepreneurship. Also, hardships should be limited by one big package of reforms adopted at an early stage, which the population more readily accepts than a long process of piecemeal reforms. A swift start of the reforms prevents the social climate to opt for a gradual reform. The adherents of the radical reform stress the importance of trust and discipline: once the citizens discontinue to believe that their personal effort is effectively strengthening the reforms, they most likely opt for a change in the next parliamentary elections.

Janos Kornai's liberalisation and stabilisation programme (1990) is one of the most important works on economic transformation. Kornai considers six requirements as crucial for a successful privatisation of Hungary (1990, S. 38-50): 1). True liberalisation of the private sector; 2). Legal guarantees that private contracts are enforced; 3). Emphasis on the absolute security of private property by i.e. laws, party programs and public statements of leading government members; 4). No restriction of private investment by the tax system; 5). Promotion of private investment and capital by credit; 6). The private sector must be socially respected. Kornai focuses on potential sources of tensions such as the wages of state employees. The crucial thing is to get the continuous support of state employees for the stabilisation programme while freezing their wages (1990, S. 192 ff). To avoid the spiral of wage and price, wage discipline must be strictly held on to; the difficulty herein is to convince the state employees that this step is essential even though directed against their own interests. Unemployment represents a further source of tension (1990, S. 197). Jobs are object to the emerging market; job rights or employment guarantee for all workers cannot be realised within a market situation, which is based upon the adjustment of supply and demand (1990, S. 197). In order to prevent the premature stop of the program, financial aid should be provided, which involves the creation of reserves. According to Kornai, economic growth is the only safeguard against unemployment since it creates new jobs while the emerging private sector will absorb a considerable proportion of former state employees (1990, S. 200). The programme requires a strong government, if it is to bear success (1990, S. 206). Kornai strictly opposes the argument that an authoritarian government like a military junta is more successful in reforms (1990, S. 206). Only a government elected by the Hungarian people should be entitled to implement the programme. Crucial is further a stable coalition: economic transition depends upon peaceful agreements between opposition and government. With other words: there must prevail a common sense supportive of the reforms.

Kazimierz Z. Poznanski holds Eastern European economic transition a complete failure because of the particular way it was undertaken: capitalism was built with communist tools. State assets considered to belong to nobody were sold abroad to a percentage of their value due to corruption and "minimal supervision

of the state" (2001, S. 322). The result is a foreign dominated property structure with labour remaining local. Building capitalism without a capitalist class, which is incapable of emerging since property mostly belongs to foreigners, represents a pathological condition of the system (2001, S. 320). The post communist recession, which started with the reform process in 1989 and 1990, is a catastrophe comparable to the Great depression of the Thirties (2001, S. 351). A slow pace in state-controlled privatisation would have been the better option granting a cautious change of the state-market relationship. Under post communism, state activity swiftly shifted from its traditional tasks of resource allocation and expansion of production to its new task of asset privatisation (2001, S. 323). Regardless of the loss of national capital, privatisation advanced seemingly fulfilling the successful retreat of the state from the market. What actually happened, so Poznanski, was a decay of the state in its systemic function, i. e. the state became dysfunctional as allocation and distribution agent. At the same time, however, the state, or rather the members of the former nomenclature, became increasingly powerful due to their control of the transformation agenda. To illustrate this peculiar process with a simplicist picture: the state, its functionaries respectively, did not leave the house called 'communism' via the front door and then returned through the back door. After re-labelling the same house with 'post communism', they started to divide and sell the soil on which it was built (public property) while at the same time adding top floors to the house on shaky grounds. It remains to be seen whether such deviant form of capitalism can be corrected. Poznanski's final prognosis reads that a further decade is needed to recover from the 90ies recession.

What is the relationship of economic transformation and the minority issue? I think that civic discipline and collective identity are mutually dependent. Economy was the dominating issue for the goal of a classless society was above all to end private ownership. This created a new collective identity based on strict egalitarianism. When the ideological building broke down, national unity or rather, what people imagined as national unity, provided the feeling of being bound by a supraindividual common good. The elites called for civic discipline, patriotism and trust – what they meant was actually obedience and acclamation. This was the case in Slovakia under former Prime Minister Meciar² and Milosevic-ruled Serbia. Both were elected because their populist and nationalist agendas drew heavily on the rhetoric of identity and unity. Both embarked on a nationalist course based on ethnic homogeneity. Their agendas were close as regards the ideal of the ethnically homogeneous nation state, yet their policies had different results. The Meciar controlled government refused to adopt the Hungarian language law, but the Hungarians were never threatened by expulsion or genocide. Meciar and Milosevic justified their policies with reference to past injustice: the Slovaks had been oppressed by the Hungarian cultural assimilation in 19th Century. The Serbs had suffered under Ottoman rule and, in 20th Century, under Albanian terrorism. The increasing inter-ethnic violence between Serbian authorities and the Kosovar Albanians in the

2 On the Meciar regime's peculiar understanding of the concepts 'unity' and 'democracy' see Baer, 2001.

1990s emerged in a territory of historic significance for the Serbs. Kosovo polje or *Metohija*, the central part of today's Kosovo, is a landscape of almost mystical character since evidence of the past glory of the Serbian nation. Southern Slovakia, where the Hungarians settle, does not represent such a historically significant place. The main reason for the violence against the Albanian Kosovars, however, might have been their different culture and religion. The autonomy and state-constituent status the Albanian Kosovars enjoyed in Titoist Yugoslavia (Simons, 1980, S. 518) was a further threat to Serb state sovereignty.³

Unity in its reduced conception of homogeneity led to an identity based on ethnicity, language, religion and absolute loyalty toward the new leaders. Unanimity and acclamation replaced economic reforms. It is interesting that countries, which embarked on violent ethnic nationalism such as Croatia and Serbia, lacked a reform program. The Meciár regime had a rather creative understanding of economic reforms basically benefiting the nomenclature and introducing bribery and corruption, but it did not call for violence against the Hungarian minority. The common feature of all three countries, Croatia, Serbia and Slovakia, however, consisted in the populist and authoritarian features of ethnic nationalism. Membership in new nation had familiar authoritarian traits: any critique of the new leaders was considered indecent, if not simple treason. The new 'fathers of the nation' skilfully based their politics of identity on what they considered being most important: the ideal of homogeneity as remedy for past injustice.

The appalling consequences of such policies are not a new phenomenon. Considering the facet of personalised leadership, the 1990ies could be described as the age of the revival of the "mob leaders" (Arendt, 1986, S. 265). Clearly, Meciár, Tudjman and Milošević are not Hitler or Stalin, yet the political rhetoric and the goal they pursued are close in the totalitarian extent of ethno nationalism. In analogy, we could speak of Tudjman, Meciár and Milošević as 'mob leaders light'. The idea that my group is by nature superior is the starting point of identity construction. Add to this the concepts of 'national sovereignty', 'self-determination' or 'democratic popular will' distorted by postcommunist simplification. Overload these concepts with freedom claims and legitimise them by the 'victim/remedy argument' in that my group has the right to remedy and self-protection because of injustice suffered in the past. The result is a psychological-political climate in which hatred and violence become socially acceptable.

Donald Horowitz shows the crucial role of symbolic language in majority-minority relationships: ethnic claims are, in contrast to material demands, not quantifiable because of their symbolic content (1996, S. 291). Because of their non-quantifiability, these claims are hard to realise by discussions that are based on the

3 Article 245 of the 1974 Constitution declares: "The nations and nationalities of the Socialist Federal Republic of Yugoslavia shall have equal rights." On the language rights in the Yugoslav Federation see article 246 of the Constitution: "The languages of the nations and nationalities and their alphabets shall be equal throughout the territory of Yugoslavia." (518). Article 249 on equality of all citizens regardless their ethnic or national origin: "Every citizen of a Republic shall simultaneously be a citizen of the Socialist Federal Republic of Yugoslavia ... Citizens of a Republic shall on the territory of another Republic have the same rights and duties as the citizens of that Republic."

political co-operation of the elites of the ethnic groups. Ethnic demands are unlikely to become issues of a rational policy-making, particularly in the emotional climate of reconstructing identities, because goals like self-protection or sovereignty are difficult to measure. To which degree and how should we implement self-protection in order to appease irrational fears, which view the others as a direct threat? Political goals, be they equal treatment demanded by the minority or the majority's call for the respect of the popular will, tend toward violence because identities are built around the symbolic icons of 'surviving', 'freedom' and 'state sovereignty'. Homogenisation along ethnic lines hence leads to an increasing gap between the communities; the lack of a deeper experience of pluralism only contributes to the virulent emotional escalation. The political discourse tends to depoliticise since affected by an overload of symbolism and emotions. The rhetorics of identity construction consist in the mutually enforcing connection of homogeneity and violence: embarking on homogeneity politics provides identity that is based on the exclusion of the non-members. Any identity pattern short of the crucial element of ethnic homogeneity lacks the psychological-political benefit the members consider as essential for their ethno-cultural community. Such an identity pattern would indeed not differ much from the egalitarian identity promoted by the communist ideology. Yet the new national identity targets exactly egalitarianism and internationalism since they represent the main obstacles of ethnic homogeneity. Under communism, social egalitarianism and the absence of political participation resulted in citizens' feelings of the system as alienating. The Serbian psychiatrist Dusan Kecmanovic holds that homogeneity meets crucial psychological needs: apart from the need to "identify one's self in terms of something supra-individual", it fulfils the needs of cognitive simplicity and affiliation (1999, S. 309). Regarding the political and socio-psychological movements that led to the Yugoslav break up, Kecmanovic speaks of "ethno nationalism" that has reached "epidemic proportions" (1999, S. 309).

From a liberal democratic perspective, nationalist violence has not much in common with politics in terms of a rational and humanist way of dealing with the polity's matters. Exclusion as the intrinsic element of homogenisation replaces the political reality by a new construction that is based on simplistic assumptions of what reality is. This new reality is explained by reductionist and mono-casual arguments. According to Kecmanovic, the construction of a new reality is (ab) used to "produce more orderliness than exists in reality" (1999, S. 309). Cognitive dissonance such as different views and opinions have to be fought against in order to make identity and reality compatible: Once homogenised identity and the new (pseudo-) reality match, the community of the others remains as the single problem of the nation. The Milosevic regime's persistence at the Rambouillet talks was, in my opinion, the last step of the process of matching reality with identity: the Serbian leaders conceived of the NATO-campaign as clear evidence supportive of their own particular view of reality: the 'West's' general anti-Serb attitude leads to war.

From the perspective of homogeneity and the eyes of the totalitarian mind set, the political extinction of the others is vital: they naturally represent the last obsta-

cle on our community's way toward freedom, self-protection, national existence, state sovereignty – or whatever skilful propagandists consider the missionary goal. Managing and manipulating the mob has replaced politics in terms of implementing an agenda of economic transformation. The dynamics of discrimination, physical extinction and territorial expulsion are unleashed. We can regard the chronology of Kosovo as 'role model' that demonstrates the steps of homogenisation: denial of the constitutionally granted autonomy status, abolition of educational institutions, implementation of Serb police force and, eventually, violent expulsion.

What makes the politics of homogeneity so attractive? *First*, they offer a new experience: difference and choice are allowed, whereas the overpowering dominance of internationalism and egalitarianism of communism had destroyed crucial features of identity such as the feeling of history, time, and space. This had resulted in a deep feeling of senselessness (*nesmysl*) among the citizens (Havel, 1990, S. 136). Probably the most important features of identity according to ethno-nationalism are participation and influence: seemingly close to grassroots democracy, this authentic feeling involves that a) I can openly express my opinion on topics of my choice b) My co-citizens can openly react on my thoughts hence affiliate and c) Whatever we talk about, we share a common political past hence the common political experience of state paternalism. Therefore, we can fight together for our new superior and supraindividual goal. The new experience of political participation, the fact that I can contribute to the future of my community, provides me with a collective identity. Because citizens of communist societies were subject to the constraints of the socialist civic identity, the new public not necessarily pluralist political discourse was considered crucial. Nationalist arguments and rhetorics literally exploded orchestrating the Yugoslav Federation's break up because they were strictly forbidden before.

Second, given the psychological-political legacy of communism, the politics of homogeneity represent an almost perfect guarantee for the old elite of maintaining power. Nationalist homogeneity prevents elite exchange if anticipated before the collapse (Serbia, Slovakia) or embarked upon swiftly during the breakdown of the old ideological power (Ukraine). The main reason for Prime Minister Meciar and his HZDS followers to block the adoption of the Federal constitution in 1992 was power maintenance and the creation of the sovereign Slovak State. On the Czech side, Prime Minister Vaclav Klaus seemed to be equally happy with the prospects of a sovereign and economically better off Czech State.

The paper consists of the following sections:

Section one deals with the limits and possibilities of equal treatment of minorities. The concepts of 'recognition' and 'toleration', considered to be crucial for the 'quality of equality' shall be analysed. The concept of *substantive equality* is the basic idea on which I ground my assessment of the concepts of 'recognition', 'appreciation' and 'toleration'.

Section two advocates power sharing as instrument supportive to equality and recognition because of the effects it has for enhancing trust. The idea of consociationalism is based on an elite agreement: the representatives of the ruling majority assign a distinct amount of their power to members of the minority enabling the

minority to participate in decision-making on the governmental level. Power sharing clearly infringes the majority's representation in that the minority enjoys overrepresentation, compared to its summarily minor status. What, then, are the benefits of a democracy that deliberately, i. e. based on common consent, discriminates against the majority? I intend to show that power sharing provides long term benefits that are particularly important for de-escalating virulent psychological and political tensions in ethnically divided societies. Therefore, power sharing represents a crucial condition for democratisation and inter-cultural non-violence and peace. The democratic development of Macedonia shall illustrate my thoughts.

In the *concluding section*, I shall deal with the relationship of power sharing and Public International Law. I do so as political theorist, not as expert of Public International Law. If the particular conditions necessary for the implementation of consociationalism are given, should the international community support power sharing in multi-ethnic states? Could elements that enhance effective minority participation, become a decision-making criterion in institutions of international politics? This last section attempts to answer the essential question of my paper: as both a rational and ethical way of dealing with minority issues, should power sharing become a fundamental principle of international politics?

Before I move on to the contents of the paper, let me give a brief summary of recent Macedonian politics.

In May 1989, the communist assembly of the Macedonian Republic had adopted a constitutional amendment, which changed the contents of Article 1: Macedonia was now defined as national state of the Macedonian people and not as multi-ethnic state as in the 1974 Tito-Constitution. The right to vote in the referendum on independence and sovereign statehood of Macedonia, *de iure* and *de facto* the secession of the Republic, involved all Macedonians, regardless of their place of birth or place of living. This infringed the distinction between citizenship and nationality since the only category of identification was the self-ascription of the voters of being Macedonian, more precisely, of Macedonian nationality and south Slav ethnicity (Danforth, 1995, S. 143). The Diaspora groups given the right to vote increased the majority of the Slav Macedonians against which the Albanian community called on a boycott of the 1991 census: the first signs of the politics of re-nationalisation had emerged. However, thanks to the popularity of the first President Kiro Gligorov, the sound political course of the subsequently elected governments and the support of the International community, Macedonia was on her way toward a better representation of the Albanian minority, which amounts to 23 % of the population.⁴ Political and institutional efforts to de-escalate virulent inter-ethnic tensions have been made very early: in 1992, the Crvenkovski government declared the larger representation of the Albanian community a main task on its agenda. The Council for Inter-Ethnic Relations was established in 1993; it is composed of representatives of the minority communities and deals with integra-

4 The ethnic composition of the Macedonian population: total 2 075 196 persons, of which Macedonians 1 288 330 (66.5 %), Albanians 442 914 (22.9 %), Turks 77 252 (4 %), Roma 43 732 (2.3 %), Serbs 39 260 (2 %), Muslims 15 315 (0.7 %) and Vlachs 8 467 (0.004 %). Government Census (1994), Statistical Office, 1994 Census Data, Skopje.

tion issues. In November 1998, Prime Minister Georgievski (IMRO) invited the radical Albanian party PDP-A to the government coalition. PDP-A had split off from the moderate PDP in 1994. It has since refused any compromise with the government on the issue of a constitutional change granting the Albanian minority state-constituency and the recognition of Albanian as second official language-of-state. In the light of the fact that the IMRO – DA coalition had a clear parliamentary majority, the integration of PDP-A demonstrated the political will of the government to inter-ethnic co-operation and contact on the government level.⁵ At the time of writing, its minority issue threatens the young Macedonian democracy. The longer the deliberately unleashed violence against the Macedonian state will last, the more unlikely the political will of the Macedonian majority to make efforts supportive of inter-ethnic tolerance. The slippery slope of civic discipline, multi-cultural identity and the ideology of ethnic homogeneity could be left by both communities. This could result in an unnecessary escalation hindering the democratisation process in a small country that so far has managed to keep its inner stability in spite of the dangers of its immediate neighbourhood.

1 Minority, majority, equality – Appreciation through Substantive Equality

“Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being [...] Due recognition is not just a courtesy we owe people. It is a vital human need.” (Taylor, 1992, S. 25 f)

What is essential about appreciation, recognition and toleration? Let me in the following explain why I consider appreciation via recognition as crucial.

The equality of all persons is the basic principle of Human Rights. Individuals are considered equal regardless of race, age, sex, colour, culture and religion. The equality principle denies any discrimination based upon individual diversity. Equality means also equality of chances, particularly access to education, job opportunities and political participation. Members of the Albanian community were and are experiencing discrimination which comes in varying degrees: while underrepresentation in the academy, higher education, police, military and business life is a significant feature in current Macedonian society, Albanian citizens report a ‘silent discrimination’ on the inter-individual level. They experience a general hostility in daily relations with Macedonians contributing to their feeling of being second-class citizens (Annual Report 1998, Macedonian Helsinki Committee, S. 8,9). The Macedonian Constitution grants the equal status of all communities as well as the protection of their rights; yet the reality of inter-ethnic relations dif-

5 The outcome of the 1998 parliamentary elections: IMRO-DPMNU 28,1 %, DA (Democratic Alternative) 10,7 %, together 59 seats, SDSM (Social-democratic Union of Macedonia) 25,1 % and 29 seats, PDP, PDP-A and NDP (National Democratic Party) 19,3 % and 25 seats, LPD/DPM (Liberal-democratic Party / Democratic Party of Macedonia) 7,0 % and 4 seats. The smaller parties representing the Roma, the Turks, the Serbs, the Vlachs and the Socialists gained together 4,7 % and 3 seats.

fers in equality of chances for the Albanian community. A topical issue in recent Macedonian politics was an Albanian university providing higher education in Albanian language. Members of the Albanian community claimed for the university to be financed by the state; they object the newly established Van der Stoel University with the argument that it is primarily the duty of the state to provide higher education for minorities. Private initiatives like the Van der Stoel University would not solve the inter-ethnic problem; the Albanian community insisted on the due recognition of the existing yet illegal Albanian University in Tetovo (TOL, 19 February 2001)

A necessary condition for the prevention of the perpetual dominance of the majority is to limit the democratic system by minority rights (Sartori, 1997, S. 42-43). The absence of minority rights would petrify the rule of the majority. Thanks to its mathematically major status, the majority could rule without considering the needs of the minority. This would *de facto* lead to a representation without consequences. The absence of the representation of the minority would be a never-ending one questioning the sense of electoral participation of cultural minorities in the first place. Due to the agenda-setting power of the democratic election procedure, unlimited majority rule could reach as far as the abolition of the democratic system. Without rights that limit the majority the principle of reciprocity is infringed, which grants the chance of being part of a future majority and allows participation in executive decision-making (Beetham, 1995, S. 28 ff). Democracy must provide minority rights in order to grant its own surviving, since distinct groups of citizens would otherwise lack the possibility of effective participation in the political process. This basic principle of democratic theory represents the grounds of my following thoughts on toleration and recognition.

The distinction between tolerance and recognition is met how I conceive of the 'quality of equality', i. e. the degree equality is provided. Tolerance and recognition depend upon the participatory rights I consider appropriate to assign to an individual by virtue of my understanding of democracy. Let us assume the following: Given that I am an economically well or better off citizen, whose cultural identity is that of the majority in a multi-ethnic society. I do not have a problem accepting the minority communities' customs, beliefs, in short, their cultural identity and rights granted by the constitution. I respect and tolerate the minority in its difference. The minority rights they enjoy I consider as vital for democracy. I can act tolerantly, as long as I do not consider the others as a direct threat to my individual well being nor the future well being of my community. Be it that we are generally indifferent toward our identities, be it that there are no disadvantages linked to tolerance, we can both peacefully co-exist. Tolerance, a necessary condition for co-existence, is easy because of the absence of financial, psychological and political costs. The majority can tolerate different identities as long as it does not feel being urged to efforts hence costs. From the perspective of the majority, any psychological, financial or political efforts that do not result in instant rewards are senseless and costly since the alternative is co-existence without effort. The minority, however, cannot afford this 'luxury of accounting costs and benefits'; its minor size urges it to continuously making efforts to preserve its rights and keeping its identity.

Again, as a member of the majority, I can accept that the others live in a distinct area or place in which they enjoy cultural autonomy. The tolerance I act upon in this particular constellation, however, does not require my interest for their cultural customs and identity. Indifference as the simple lack of interest can be supportive to tolerance because it is neutral, neither endorsing diversity nor discriminating against it. In terms of indifference based upon the absence of inter-community contacts, tolerance represents a crucial step toward recognition as it lacks the dangers of negative prejudices that picture the other in simplistic black-white patterns.

On the other hand, such tolerance lacks awareness of the other's diversity, particularly the features of his cultural identity. I understand recognition according to its original meaning: to acknowledge on the basis of knowledge and experience, i. e. in the sense of identifying again. If I recognise the principle of equality as universally valid, I recognise the other as a political individual that is equal to me yet has a different identity. The crucial point is the distinction of toleration and recognition or, with other words, of *formal and substantive equality*. To recognize the minority identity of a citizen involves that I am aware of the consequences he has to face when he finds himself in inter-action with members of the majority. As a result of my recognition, I should at least try to understand the distinct situations the other has to cope with when in contact with my community. Kristin Henrard describes the crucial difference between formal and substantive equality as follows:

"The expressions 'equality before the law' and 'equal protection of the law' are closely linked to the fundamental distinction [...] between formal and substantive equality or between strict, mathematical, numerical equality and real, effective, true, normative equality." (Henrard, 2000, S. 61)

And quoting Justice L'Heureux Dubé of the Supreme Court of Canada:

"This term [substantive equality, add. J.B.] reflects the underlying goal of achieving an equality of outcome or substance among all members of society, regardless of their differences ... This ideal can be contrasted with the concept of 'formal equality' or sameness of treatment in the law, which does little to overcome patterns of social disadvantage and indeed, may perpetuate them." (Henrard, 2000, S. 61)⁶

Let me illustrate the concept of recognition via substantive equality with two examples.

Example 1: Citizen A cannot participate in a job interview set by a governmental institution to be held in the capital, since his community celebrates an important holiday on the countryside on the same day. His absence would be considered as a grave disrespect of his community and its customs.

Example 2: Citizen B is a member of an Amazonian (females only) community, hence a trained fighter. She applies for a job with the police. The institution declines her application with the argument that her physical height does not meet the standard criteria set for the position. Her height would not be supportive, in fact would be detrimental to the proper exertion of a police officer's duties.

6 Quoted according to L'Heureux Dube, 1997, S. (335) 338.

What are the implications of the equality principles in these two cases? Citizen A's application could have been *made* possible by a thorough check of the minority communities' official holidays. If it was impossible to find a day suitable to all applicants, a second or third date could have been set upon requirement by the applicant. Citizen B's wish to join the police force was declined upon a physical feature directly connected to her gender. She did not meet the standard height, but as an Amazonian she has different physical qualifications that should allow for disregarding breaking the standard criterion and consider her application.

First, in both cases, the equality principle in terms of formal equality is not infringed, for the basic criteria set for applicants seem reasonable: a governmental institution of a modern hence laic state schedules job interviews on a working day. If the schedule was set according to the principle of cultural and religious neutrality of state institutions, interviews could have been set on Christmas Day, for example. This is highly unlikely; in most countries, official state holidays traditionally mirror the majority culture's holidays. A crucial distinction I believe has to be made as regards the intention: is the schedule set due to a lack of awareness of minority communities' holidays or deliberately to make minority participation more difficult?

Let us optimistically assume the first option of a human mistake and non-intentional lack of consciousness. In the second example, the physical criteria of minimal height were considered a crucial condition for joining the police. In both cases, the principle of equality has been respected. Neither citizen A nor citizen B was deliberately and *a priori* excluded from participating in the competitions. In spite of the equality principle, both citizens A and B were denied access to the jobs. The equality criteria applied meet the demands of formal equality, hence tolerance in the sense of indifference of cultural diversity: all applicants must meet the formal standards required for the jobs, regardless of their cultural background. Formal equality, however, lacks an essential element required for effective recognition of minority identity: the political will of being aware of substantial criteria of difference, which in our cases are citizen A's community holiday and the Amazonian identity of citizen B.

Formal equality is considered as effective criterion of the relationship of state and citizens that meets justice. Formal equality is the essential principle in a democratic rule-of-law state. Equal treatment in procedures of accessing state institutions is – or should be – the fundamental principle, be higher education, business-related, culture and well-fare institutions. An exception I believe are competitive free market situations: the relationship between a company and a client is naturally that of choice and offer.

It essentially differs from state-citizen or state-company relationships. The crucial thing about corruption is the fact that it infringes equal treatment and equal access by setting a standard that is in its nature closed and arbitrary, i. e. not conceivable by everybody.⁷ Standards and criteria for decision-making, which in a non-

7 The essential invisibility of the criteria of corruption represents naturally a threat to democracy. I cannot discuss this further in this paper. As human weaknesses, corruption and bribery exist in varying forms and degrees; for the purpose of this paper I regard equality before the law as basic.

corruption environment are based on formal equality, are usually created according to values, beliefs and customs of the majority of the populace. They lack substantive room for different cultural makeup. The result is a neglect, albeit due to lack of awareness, of distinct features of minority identity. In a corruptive environment, the neglect is deliberate, intentional and not always set along ethnic or cultural lines, mostly obeying the universal laws of individual influence and wealth. Ignorance as result of unawareness infringes equal treatment – but not formal equality – in that standards valid for the majority are automatically applied to a minority, which has differing standards.

Let me elaborate on this crucial issue: a general recognition in terms of substantive equality, hence equal treatment of substantial diversity, applied to the sum of customs, beliefs and rituals of all the minority communities of my state I do not consider as necessary nor wishful. I neither advocate for accepting *a priori* all claims of a community, just because it finds itself in a minority situation. These claims have to meet the principles of Human Rights. In addition, I think that a close look at the different values, customs and rituals of minorities is helpful. Such analysis would enable an assessment according to the principles of Human rights and their violations, respectively. Minority protection and recognition must not break Human rights. To legitimise for example female circumcision or abortion ban with cultural tolerance would mean to throw out the baby with the bath. The uncritical recognition of such cruel and ancient customs, against which the individuals subject to cannot protect themselves since in a minority status within their own community, would not only mean a grave violation of Human rights. False tolerance would provide a 'passport' for committing violations of personal dignity and physical integrity by virtue of a minority community's customs. Distinct groups would enjoy special rights and a special status as regards equality of legal treatment. Substantive equal treatment must not apply to violations of Human rights.

Moreover, such special status is not helpful in minority issues: not every ritual or custom can be claimed as being an essential feature of identity all the more if they actually violate personal dignity and physical integrity. The relationship of inter-cultural tolerance and the values Universal Human Rights back, is naturally a slippery slope. But again: no violations of Human Rights on the grounds of traditional customs of minority cultures. A possible way to accommodate, which customs are essential for a community and which habits should be renounced on, could be found in inter-community round-table talks.

My appreciation based on recognition of the other presupposes that I am willing to listen to his suggestions on how his situation as a member of the minority could be improved. My tolerance of his diversity, however, does not necessarily mean that I am convinced of the importance of his continuous participation in political decision-making. Respecting his minority rights is certainly a necessary step toward recognition; I must be willing to tolerate his different language, religious rites and/or distinct family system before I can, in a second step, understand his political claims. The point is that toleration works well as long as the minority community contents itself with the rights assigned by the majority. Toleration as

basic indifference toward the other can be positive in cases of economically wealthy societies with a democratic tradition like the Swiss or the Dutch. Post-communist societies with their political and economic burdens seem to be more crucially affected by minority claims for effective participation. Toleration and indifference can then swiftly turn into open hostility. That is the reason why I think that power sharing is vital for democratisation in case it is seriously called for by the minority(ies).

Formal equality stands in need to be better adapted to the distinct conditions of multi-ethnic postcommunist states. While the Lund Recommendations focus on the effective participation of minorities in public life, the Hague recommendations have elaborated standards regarding education rights of national minorities. This paper cannot deal with the single principles and contents of both documents; they represent, however, a crucial step in a process I consider as essential for future inter-community tolerance.

2 Power-Sharing

To put it bluntly, power sharing is about sharing the cake, not dropping crumbs. Sharing depends upon the elite's political will to renounce on parts of its democratically assigned power in order to establish a system, in which power and responsibility are distributed along virulent confliction lines of cultural membership. The way the Macedonian governments choose was promising; Albanian extremists disturbed the slow and difficult process of trust building by violence.

"The essential characteristic of consociational democracy" according to Arend Lijphardt, "is not so much any particular institutional arrangement as the deliberate joint effort by the elites to stabilise the system" (1969, S. 213). In other terms, the rule of the majority is limited by granting the minority a distinct share of governmental power. What are the advantages of such arrangements?

Conditions considered favourable for consociational democracy are a multi-ethnically composed population, the small size of a state and a considerable gap dividing the communities (Lijphardt, 1969, S. 241 f). Inter-ethnic or more generally inter-community tensions could de-escalate by a granted share in government, the judicial, public, military, educational and economic institutions. A consociational system offers the benefits of mobilisation and responsibility: the political elites of the communities have to cooperate in the decision-making process in order to find political solutions acceptable to all. Given differing interests, continuous interaction can promote mutual understanding and enhance tolerance. The responsibility for the outcomes is shared, regardless of the results of the decision and policy-making are positive ones or not. Effective participation has further the effect of de-escalation: the huge economic and political tasks post-communist societies face require a realistic and reasonable approach to decision-making. Historic icons such as 'Great Macedonia' or 'Great Albania' are certainly attractive when promoted in rallies on warm summer nights. Transformation issues like foreign loans, unemployment rates, market liberalisation and privatisation of state-owned enterprises

demand for a sober mind. My point is that power sharing can help transcending the particular interests of the communities and dissolve the patterns of perceptions that seem to stick to ethno-cultural identities like bees to a honey pot.

A further concern is the electoral procedure: the status of the 'consociational minority', i. e. the minority that participates in decision-making on the governmental level thanks to the consociational arrangement met with the majority, is not absolutely determined by the procedure of elections. Its position in the government is not dependent on voters' preference. The representatives are not urged to unrealistic bargaining or hastily set populist agendas in order to gain as many votes as possible. Because of the share in executive, legislative and judiciary power that is permanent and granted, the monolithic-single fold pattern of identity e. g. 'Macedonian citizenship (equals) = Macedonian nationality = south Slav ethnicity' stands chance to be replaced by two- or three-fold, heterogeneous and overlapping identities, for example by the pattern 'Albanian ethnicity + Macedonian citizenship + Albanian nationality'. In this case, decision-making would tend rather toward a heterogeneity for previous monolithic identities could develop toward pluralist and multicultural appreciation. Multiple identities could replace the homogeneous identity; traditionally internalised patterns of perception could start to break up. Such a process is by no means a swift one and rare short-term results might be disappointing. On the long-term, however, I think the benefits are substantial. Power sharing is directed against the 'winner takes it all' democracy and allows for integrating different groups by political responsibility. The goal of a consociational arrangement is not to merge different groups or to melt diversity to an unclear swamp, but to render governmental democratic rule efficient by removing the substantial political obstacle of opposition. To put it bluntly: since all rule, all are to blame. Further can contacts between the members of the groups effectively target discrimination: once provided with executive power and responsibility, the communities will face difficulty in sticking to their traditional arguments of being discriminated against. Not only the minority, but also the major community will start to question their self-ascribed image of the permanent victim. The goal of such a consociational process is a sound one: regardless how many identities individuals might assign themselves to, the *circulus vitiosus* of mutually exclusive perceptions is broken once citizenship has become the dominant criteria of identification. Which conditions or 'political hardware' are required for a consociational process?

Governed by an "elite cartel" (Lijphardt, 1969, S. 213)⁸, an effective consociational system requires fundamental consent of the political elites involved: they must share the view that the gap dividing the communities is a centripetal threat to the state. Also, the unquestioned support of the common state in terms of territory and sovereignty, not internal arrangements, must be the basic conviction of the elites. The elites must in principle be willing to live in a common state, whereas the *modus vivendi* is a matter of further discussion. If secession or expulsion become realistic options supported by the majorities of the groups, the consociational process is unlikely to get started. The dismemberment of the Czechoslovak Federa-

8 Quoted according to Dahrendorf, 1967, p. 276.

tion in 1993 was decided by the elites. Macedonia's secession from the Yugoslav federation in 1991 was legitimised *ex post* by popular vote. Since the elites are usually organised according to community membership, the fundamental consent required depends upon the elites' capability of presenting the populace a convincing consociational agenda.

If this crucial consent on the perils of fragmentation is given, the elites must further have the will to create a non-discriminatory agenda, which expresses the demands and interests of the communities. The goal of inter-elite communication is not necessarily to overcome the gap, but to make it an issue of internal affairs and to de-escalate the negative communication patterns of the communities. How are the outlooks for consociationalism in Macedonia?

First, let me draw on the issues of international assistance and violence, which I consider as essential. I do not think that power sharing can be applied to every multi-ethnic state. Why? The dynamics of organised violence destroy the essential amount of trust required for a consociational arrangement. Rejection of violence is an essential psychological and political factor. Once organised violence has broken out, actively endorsed or tolerated by the elites, it is difficult for all parties involved to overcome the dynamics of aggression and retaliation. Even if the international community can stop the conflict, the patterns of mutual hostility of the belligerent polities are already confirmed by the violence unleashed. My point is that organised violence as it happened in Rwanda, Kosovo and East Timor, is based on the escalation of the very patterns of perceptions that legitimise the conflict by anticipating it. One could speak of a 'self-fulfilling prophecy'. When the basic amount of mutual trust between the communities is abolished, the common state ceases to be a realistic project. The prospects of consociationalism in countries, where violence was induced by the elites are low, if not impossible in a considerable amount of time. In countries where inter-ethnic violence is virulent, yet has not broken out, consociational arrangements can have a preventive function if accommodated with the support of international institutions. At the time of writing, the situation in Macedonia does not allow for an optimistic prognosis. The deliberate use of violence by Albanian terrorists against the Macedonian state and Macedonian citizens will crucially affect the political will of the majority to respect their minority rights. Needless to say that Macedonian citizens of Albanian descent will have to expect increased social hostility. As for now, we can analyse the political development and the successes of the nearer past.

The potential dangers of spillover from Kosovo had a unifying effect on the Macedonian and Albanian elites. The Albanian representatives did not use the conflict as an opportunity to stress on their demands. Secession was not a base of argument of the Albanian elite. Both the Macedonian governments of Branko Cervenkovski, SDSM (Social-democratic Party of Macedonia – former Communist Party) from 1992 until 1998 with re-election in 1994 and Ljubcho Georgievski (IMRO), elected in November 1998, managed to keep the extreme Macedonian nationalists under control.

The Macedonian political elites, particularly the coalition government under Prime Minister Georgievski, seemed to be willing to inter-ethnic co-operation.

IMRO, Georgievki's party, has a clear national Macedonian programme yet favoured the better representation of the Albanians by inviting PDP-A members to the government. A sound economic policy and tight relations with EU and NATO were evidence of the government coalition's orientation toward the West. Compared to the immediate neighbourhood, the Macedonian governments managed to avoid involvement in the regional conflicts. Far more, the Macedonian citizens were willing to consolidate their democratic system⁹.

According to consociational theory, a low amount of burdens on the system is supportive to inter-elite co-operation (Lijphart, 1969, S. 218). In Macedonia, the opposite was the case: the burdens were painfully high considering the size of the state and the weakness of its economy. The economic losses resulting from the international boycott of Serbia, the two Greek boycotts of Macedonia's export in 1992 and 1994 and the Kosovo campaign were economic and diplomatic challenges. This overload, however, effectively strengthened the inter-elite co-operation: no community seemed to be interested in facing the political and economic consequences of secession. The majority of the ethnic Macedonian elite had no interest in a stronger discrimination of the Albanians. The Albanian elites did not consider the union with the devastated Kosovo and the underdeveloped Albania as option. The external threat was obviously the crucial factor that initiated the break with the *circulus vitiosus* of mutually enforcing patterns of hostile perception. The consent of the elites was weak, but it was a promising start that could have been enforced by a constitutional guarantee fixing the Albanian share in government, state institutions and public administration. Also, increased investment in Macedonia's Western part, where the Albanian minority settles, could have considerably improved the minority's trust of the government. I think that a consociational process aiming at a power sharing system was possible before the events of February 2001. Now, the elites will have to face the task of a constitutional amendment that re-defines Macedonia as a multi-ethnic state with at least two languages-of-state and two major state-constituent nationalities. A further task will be the constitutional status of the smaller minority communities of Turks, Roma, Serbs and Vlachs.

As regards inter-community communication, the crucial point seems to be the distinct relationship between the elites and the body civic. The citizens, challenged by the harsh consequences of the economic transformation that resulted in an un-

9 The following definition shall clarify my point when speaking of Macedonia as consolidated democracy: "Behaviourally, a democratic regime is consolidated when no significant national, social, economic, political or institutional actors spend significant resources attempting to achieve their objectives by creating a nondemocratic regime or turning to violence or foreign intervention to secede from the state. Attitudinally, a democratic regime is consolidated when a strong majority of public opinion holds the belief that democratic procedures and institutions are the most appropriate way to govern collective life in a society such as theirs and when the support for antisystem alternatives is quite small or more or less isolated from the pro-democratic forces. Constitutionally, a democratic regime is consolidated when governmental and nongovernmental forces alike, throughout the territory of the state, become subjected to, and habituated to, the resolution of conflict within the specific laws, procedures, and institutions sanctioned by the new democratic process." Juan J. Linz, Alfred Stepan (1996), *Problems of Democratic Transition and Consolidation. Southern Europe, South America and Post-Communist Europe*, John Hopkins University Press: Baltimore, London, p. 6, emphasis added.

employment rate of app. 25 % expected to increase,¹⁰ do not share the elites' former attitude. Since the party landscape reflects the multi-ethnic composition of the Macedonian population, the minorities vote generally representatives of their own group. The inter-ethnic contacts on the mass level are still rare, particularly due to the fact the minorities settle within territorially clearly limited areas. This can be favourable for consociationalism, as cultural communities tend to develop conflicts only when in close contact e.g. in competitive direct local contact and ethnically mixed areas. Since the democratic procedure takes place in clearly perceivable local units, the prospects of a power sharing process were relatively high. With other words: the decentralisation of the democratic procedure to the regional and local levels offers self-determination via self-government of the communities in their units. The more as political issues such as investment, road construction or the establishment of academic and educational institutions usually belong to governmental competency.

3 Concluding remarks

The violence that Albanian extremists unleashed in February 2001 will certainly have one crucial negative effect: it confirms the worst expectations each community has from the other. A country that so far could keep inner peace in midst a dangerous area was deliberately driven to use force in order to defend its territorial sovereignty. The extremists used the argument of self-defence claiming for equal treatment and state-constituent minority. The modest optimistic prospects of a functioning multi-cultural democracy in the Balkans is at stake; so are the prospects of a possible future power sharing system.

Yet, should recognition via substantive equality and power sharing become a principle of Public International Law? Should we support power sharing as a legal instrument or a political remedy of societies that are threatened by the epidemic of homogeneity politics? International organisations could provide financial, technological and political assistance. They cannot, however, prescribe constitutional changes in favour of extended minority rights, as such decisions lie in the competency of the sovereign governments and the electorate.

Should democratic consolidation of multi-ethnic countries be assessed according to the extent, to which the minority (ies) is (are) granted share in governmental power? And how would such demands and judgements affect Public International Law? For democracies in the making and transitional societies I think that recognition via substantive equality makes sense and that a system that is based on power sharing is reasonable given the following conditions are met: consent of the elites, absence of violence, size of the state and territorially separated areas. In multi-ethnic states with a non-democratic past, like Macedonia, power sharing would indeed contribute to regional and internal stability on the long run. International assistance such as the stability pact has proved to be effective in provid-

10 FYR of Macedonia, p. 173, *IMF Survey*, Vol. 26, No 11, 9 June 1997.

ing technical and financial assistance. The political will to overcome old patterns of hostile perception is a fundamental condition for multicultural tolerance and later, appreciation. Such a will is lacking, not only in the so-called 'powder keg of Europe'.

My attempt to assess Macedonia's consociational prospects was met on the grounds of the previous visible political will of the elites involved, which allowed for a modest optimism. A consociational over-representation of a minority is, in my opinion, more democratic than the Westminster model of rule by majority vote. Consociationalism could represent the 'moral must', the role-model multi-ethnic democracies should develop toward. Minorities are often regarded as potentially disloyal to their state when they call for enhanced representation. The crucial loyalty toward the state the minorities are expected to grant in exchange for a consociational process, however, is not likely to develop in situations, where they experience deprivation in essential areas of civic life such as higher education, business and access to state administration. With other words: the reluctant loyalty of the Albanians citizens is understandable considering the discrimination they are still subject to in current Macedonia. As long as they feel being treated as second class citizens, how could they possibly back the state to whose institutions they are denied access? Reluctant loyalty and the deliberate use of military violence, however, are two different things.

Power sharing can be a realistic alternative to democratic majority rule in fragmented societies, if the minority clearly expresses its wish for power sharing and constitutional change. Crucial for consociationalism is the participation in effective decision-making; for multi-ethnic states like Macedonia this could mean to integrate all minorities to the government. The details of such arrangements are subject to negotiations that would benefit from international assistance. Multicultural democracy that is based on recognition via appreciation and power sharing requires above all the clear political will of the populace for co-existence in a common state.

Postscript March 2003

Upon completion of this essay, clashes between the Albanian UCK troops and the Macedonian police force went well into the summer of 2001 until US and EU officials mediated a cease-fire. The Macedonian government under Ljubcho Georgievski (IMRO) and the UCK, led by Ali Ahmeti as well as the Macedonian Social democrats and the Albanian PDSH signed the Ohrid Peace agreement on 13 August. The Albanian demands of constitutional status of the Albanian language, better representation in the police, and new law on local self-government have been met (RFE/RL, 1 February 2002). The parliamentary elections in September 2002 resulted in a shift of power from the nationalist IMRO to the Social democrats. The Social democrats under former and new Prime minister Branko Cervenkovski won 60 of 120 seats, IMRO gained only 33 seats (RFE/RL, 20 September 2002). The fact that former UCK leader Ali Ahmeti, whom the majority of the Mace-

donians consider a terrorist, has entered politics with a new party BDI, is rather promising for the future. The painful lesson learnt, however, is that deliberate violence against the state has successfully achieved in seven months, what Albanian and Macedonian leaders could not in a decade. The peace agreement, signed by the elites, could indeed lead to a stabilisation of the inter-ethnic gap. A crucial issue for the future are the rights of the Macedonian population in the Albanian territory around Tetovo. If they are equally respected, the Albanians would prove their loyalty toward the multi-ethnic state.

III

Soziale und wirtschaftliche Aspekte der internationalen Politik

